

G-010/M-89-374APPROVING TARIFF CHANGES AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Petition of Midwest Gas
to Change its Rates for Service Installations
and Residential Gas Main Extensions

ISSUE DATE: August 30, 1989

DOCKET NO. G-010/M-89-374

ORDER APPROVING TARIFF CHANGES
AS MODIFIED

PROCEDURAL HISTORY

On May 26, 1989, Midwest Gas (the Company) filed a petition with the Minnesota Public Utilities Commission (the Commission) to change its rates and terms for service installations. The Company proposed to increase residential main extensions which a customer can receive without charge from 70 to 250 feet and to lower the rate per foot charged for extensions greater than 250 feet. The Company also proposed to increase slightly the rate per foot for service lines from the main to the customer meter in excess of 85 feet.

On July 25, 1989, the Commission issued its ORDER SUSPENDING PROPOSED RATES. The Order suspended the Company's May 26 tariff filing pending further review by the Department of Public Service (DPS) and action by the Commission.

On August 11, 1989, the DPS forwarded its Report of Investigation and Recommendation (Capsule) to the Commission. The Capsule reflected a dispute between the DPS and the Company over the effective date of the proposed tariff changes.

On August 14, 1989, the Company sent its response to the DPS Capsule to the DPS and the Commission by facsimile; its mailed copy was received by the Commission on August 15, 1989.

The Commission met to consider this matter on August 22, 1989.

FINDINGS AND CONCLUSIONS

Undisputed Tariff Changes

Between the filing date and the Capsule date, the Company and the DPS reached agreement on several issues. Some of these reflected modifications to the filing itself. Specifically, there was agreement on:

1. Residential Main Extensions. The Company and the DPS agreed that new customers requiring main extensions should have to pay the cost of such extensions only for distances longer than 190 feet. This is an increase from the current 85 feet. The parties also agreed that the charge per foot for lengths in excess of the maximum free distance should be reduced from the current \$2.95 to \$2.60.
2. Customer Service Installations. The parties agreed that 85 feet of service line extension should continue to be provided to new customers free of charge, and that the charge per foot for extensions greater than this limit should be raised from the current \$2.10 to \$2.30.

The Commission finds that these changes from the current tariff appropriately reflect the costs of providing main and service extensions and match those costs to expected revenues. The Commission is persuaded that the changes, if implemented, would reasonably assure that customers would neither pay more than the cost of the services nor be subsidized by existing customers. Consequently, the Commission will approve the proposals.

Disputed matter: Effective date for Main Extension Tariff Changes

The Company requested that the agreed-upon changes in this tariff become effective retroactive to January 1, 1989. In the alternative, it requested that they become effective no later than the date of filing (May 26, 1989). The DPS recommended that the changes become effective on the date the Commission issues its Order.

The DPS provided two reasons for denying retroactivity.

First, the DPS said that making the changed rates effective upon issuance of an Order would encourage the Company and other utilities to anticipate their needs. This would enable the Commission to be better informed of regulatory concerns in a timely manner.

Second, the DPS said that permitting the changes retroactively would set a precedent for gas utilities to offer rate reductions first and obtain Commission approval second. Where competition is involved, as it is in this case, the precedent would encourage utilities to engage in predatory pricing by setting rates below incremental cost and subsidizing the loss with corporate profits. Although granting a retroactive effective date and requiring subsequent refunds might be an expedient short-term solution to this problem, a more appropriate long-term solution would be to discourage the conduct by denying retroactivity.

Midwest Gas said three facts provide a rationale for approving the January 1, 1989 effective date.

First, both the DPS and the Company had used cost data applicable to the entire 1989 construction season, therefore, it would be correspondingly reasonable to have the rate apply throughout that entire period.

Second, the Company pointed out that what the parties agreed to was a rate reduction. Given the requirements of Minn. Stat. § 216B.03 (1988) that every rate "...shall be just and reasonable," and that "Any doubt as to reasonableness should be resolved in favor of the consumer," approval of the January 1, 1989 date would promote those two objectives.

Third, the Company said retroactivity would avoid an incongruous situation where customers in the same neighborhood would be charged or not charged for identical new service depending on whether their connection to Midwest's system occurred before or after the tariff approval date.

The DPS would avoid this situation through a 3-step solution: (1) Not charge customers who connected prior to the effective date; (2) Pretend that the higher costs reflected in the current tariff were actually incurred; and (3) Midwest Gas would write down the asset investment level to reflect the dollars of contributed plant that were not really contributed.

Midwest Gas disagreed with both the policy rationales suggested by the DPS to justify making the effective date coincide with the date of Commission approval.

Midwest Gas concluded that the DPS had not shown that its position is required by law, or that Midwest Gas's position is statutorily impermissible. The Company maintained that an effective date of January 1, 1989 is consistent with the law, the statutory policy of having rates reflective of costs throughout the year, and resolving any doubt in favor of the consumer. If the Commission's primary policy concern should be the effect on

competition, the effective date should be the May 26, 1989 filing date, otherwise inevitable differences in DPS review time between filings of different utilities would unduly influence competition.

The Commission finds that the Company implemented its proposed tariff provisions prior to filing its Petition with the Commission on May 26, 1989. It continued to charge its proposed rates until directed to stop by the DPS through a letter dated July 6, 1989.

The Commission is committed to maintaining accurate tariffs on file for all public utility companies and expects all companies to comply with the filing requirements of Minn. Stat. § 216B.05 (1988).

The Commission cannot let its enthusiasm for reducing customer rates overcome its need to have all regulated companies charge only rates which are on file at the Commission. The Commission will not, therefore, approve the modified proposed rates retroactively.

The Commission, nevertheless, will not require the Company to bill customers for more than it had told them they would be charged. Instead, it will adopt the DPS proposal that Midwest Gas's shareholders should pay the contribution-in-aid-of-construction the customers did not pay. The Company will be directed to compute the amount of the payment as proposed by the DPS, and to submit a report within 30 days after the 1989 construction season to describe the total amount of shareholder contribution-in-aid-of-construction paid.

ORDER

1. The proposal to increase the free footage of residential main extensions from 85 feet to 190 feet and to reduce the charge per foot for extensions exceeding the free footage amount to \$2.60 is approved, effective on the effective date of this Order.
2. The proposal to increase the rate charged for customer service installations to \$2.30 per foot is approved, effective on the effective date of this Order.
3. The Company's shareholders shall pay the contribution-in-aid-of-construction which would have been paid by customers under the Company's effective tariffs until the effective date of this Order.

4. Within 30 days of the end of the 1989 construction season, Midwest Gas shall submit a report showing the total amount of shareholder contribution-in-aid-of-construction paid.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)